

Introduced by Senator Ackerman

January 18, 2006

An act to amend Sections 191 and 710 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1183, as introduced, Ackerman. Corporations: foreign corporations: supermajority vote.

(1) Existing law imposes various requirements on foreign corporations, as defined, that transact intrastate business, as defined. Existing law provides that a foreign corporation is not considered to be transacting intrastate business merely because its subsidiary transacts intrastate business.

This bill would additionally provide that a foreign corporation is not transacting intrastate business merely because of its status as a shareholder, limited partner, or member or manager of a domestic corporation, limited partnership, or limited liability company or a foreign corporation, limited partnership, or limited liability company transacting intrastate business.

(2) Existing law requires, with respect to certain corporations with outstanding shares of record held by at least 100 persons, that an amendment to the articles of incorporation or a certificate of determination that includes a supermajority vote requirement, as defined, shall be approved by a specified proportion of shares. Existing law provides that the supermajority vote requirement is ineffective 2 years after the most recent filing of the amendment or certificate of determination to adopt or readopt the supermajority vote requirement, unless it is renewed, as specified.

This bill would eliminate that provision that the supermajority vote requirement is ineffective 2 years after that specified filing. The bill would make other technical, nonsubstantive, and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 191 of the Corporations Code is
2 amended to read:

3 191. (a) For the purposes of Chapter 21 (commencing with
4 Section 2100), “transact intrastate business” means entering into
5 repeated and successive transactions of its business in this state,
6 other than interstate or foreign commerce.

7 (b) A foreign corporation shall not be considered to be
8 transacting intrastate business merely because its subsidiary
9 transacts intrastate business *or merely because of its status as any*
10 *one or more of the following:*

11 *(1) A shareholder of a domestic corporation.*

12 *(2) A shareholder of a foreign corporation transacting*
13 *intrastate business.*

14 *(3) A limited partner of a domestic limited partnership.*

15 *(4) A limited partner of a foreign limited partnership*
16 *transacting intrastate business.*

17 *(5) A member or manager of a domestic limited liability*
18 *company.*

19 *(6) A member or manager of a foreign limited liability*
20 *company transacting intrastate business.*

21 (c) Without excluding other activities—~~which~~ *that* may not
22 constitute transacting intrastate business, a foreign corporation
23 shall not be considered to be transacting intrastate business
24 within the meaning of subdivision (a) solely by reason of
25 carrying on in this state any one or more of the following
26 activities:

27 (1) Maintaining or defending any action or suit or any
28 administrative or arbitration proceeding, or effecting the
29 settlement thereof or the settlement of claims or disputes.

30 (2) Holding meetings of its board or shareholders or carrying
31 on other activities concerning its internal affairs.

32 (3) Maintaining bank accounts.

1 (4) Maintaining offices or agencies for the transfer, exchange,
2 and registration of its securities or depositaries with relation to its
3 securities.

4 (5) Effecting sales through independent contractors.

5 (6) Soliciting or procuring orders, whether by mail or through
6 employees or agents or otherwise, where ~~such~~ *those* orders
7 require acceptance ~~without~~ *outside* this state before becoming
8 binding contracts.

9 (7) Creating evidences of debt or mortgages, liens or security
10 interests on real or personal property.

11 (8) Conducting an isolated transaction completed within a
12 period of 180 days and not in the course of a number of repeated
13 transactions of like nature.

14 (d) Without excluding other activities ~~which~~ *that* may not
15 constitute transacting intrastate business, any foreign lending
16 institution, including, but not limited to: any foreign banking
17 corporation, any foreign corporation all of the capital stock of
18 which is owned by one or more foreign banking corporations,
19 any foreign savings and loan association, any foreign insurance
20 company or any foreign corporation or association authorized by
21 its charter to invest in loans secured by real and personal
22 property, whether organized under the laws of the United States
23 or of any other state, district or territory of the United States,
24 shall not be considered to be doing, transacting or engaging in
25 business in this state solely by reason of engaging in any or all of
26 the following activities either on its own behalf or as a trustee of
27 a pension plan, employee profit sharing or retirement plan,
28 testamentary or inter vivos trust, or in any other fiduciary
29 capacity:

30 (1) The acquisition by purchase, by contract to purchase, by
31 making of advance commitments to purchase or by assignment
32 of loans, secured or unsecured, or any interest therein, if ~~such~~
33 *those* activities are carried on from outside this state by the
34 lending institution.

35 (2) The making by an officer or employee of physical
36 inspections and appraisals of real or personal property securing
37 or proposed to secure any loan, if the officer or employee
38 making any physical inspection or appraisal is not a resident of
39 and does not maintain a place of business for ~~such~~ *that* purpose
40 in this state.

1 (3) The ownership of any loans and the enforcement of any
2 loans by trustee's sale, judicial process or deed in lieu of
3 foreclosure or otherwise.

4 (4) The modification, renewal, extension, transfer or sale of
5 loans or the acceptance of additional or substitute security
6 therefor or the full or partial release of the security therefor or
7 the acceptance of substitute or additional obligors thereon, if
8 the activities are carried on from outside this state by the
9 lending institution.

10 (5) The engaging by contractual arrangement of a
11 corporation, firm or association, qualified to do business in this
12 state, ~~which~~ *that* is not a subsidiary or parent of the lending
13 institution and ~~which~~ *that* is not under common management
14 with the lending institution, to make collections and to service
15 loans in any manner whatsoever, including the payment of
16 ground rents, taxes, assessments, insurance, and the like and
17 the making, on behalf of the lending institution, of physical
18 inspections and appraisals of real or personal property securing
19 any loans or proposed to secure any loans, and the performance
20 of any such engagement.

21 (6) The acquisition of title to the real or personal property
22 covered by any mortgage, deed of trust or other security
23 instrument by trustee's sale, judicial sale, foreclosure or deed
24 in lieu of foreclosure, or for the purpose of transferring title to
25 any federal agency or ~~instrumentality~~ *instrumentality* as the
26 insurer or guarantor of any loan, and the retention of title to
27 any real or personal property so acquired pending the orderly
28 sale or other disposition thereof.

29 (7) The engaging in activities necessary or appropriate to
30 carry out any of the foregoing activities.

31 Nothing contained in this subdivision shall be construed to
32 permit any foreign banking corporation to maintain an office in
33 this state otherwise than as provided by the laws of this state or to
34 limit the powers conferred upon any foreign banking corporation
35 as set forth in the laws of this state or to permit any foreign
36 lending institution to maintain an office in this state except as
37 otherwise permitted under the laws of this state.

38 SEC. 2. Section 710 of the Corporations Code is amended to
39 read:

1 710. (a) This section applies to a corporation with
2 outstanding shares held of record by 100 or more persons
3 (determined as provided in Section 605)~~which that~~ files an
4 amendment of articles or certificate of determination containing
5 a “supermajority vote” provision on or after January 1, 1989;
6 ~~provided that this. This~~ section shall not apply to a corporation
7 ~~which that~~ files an amendment of articles or certificate of
8 determination on or after January 1, 1994, if, at the time of filing,
9 the corporation has (1) outstanding shares of more than one class
10 or series of stock~~;~~, (2) no class of equity securities registered
11 under Section 12(b) or 12(g) of the Securities Exchange Act of
12 1934~~;~~, and (3) outstanding~~securities shares~~ held of record by
13 fewer than 300 persons determined as provided by Section 605.

14 (b) A “supermajority vote” is a requirement set forth in the
15 articles or in a certificate of determination authorized under any
16 provision of this division that specified corporate action or
17 actions be approved by a larger proportion of the outstanding
18 shares than a majority, or by a larger proportion of the
19 outstanding shares of a class or series than a majority, but no
20 supermajority vote~~which that~~ is subject to this section shall
21 require a vote in excess of $66\frac{2}{3}$ percent of the outstanding shares
22 or $66\frac{2}{3}$ percent of the outstanding shares of any class or series of
23 those shares.

24 (c) An amendment of the articles or a certificate of
25 determination that includes a supermajority vote requirement
26 shall be approved by at least as large a proportion of the
27 outstanding shares (Section 152) as is required pursuant to that
28 amendment or certificate of determination for the approval of the
29 specified corporate action or actions.~~The supermajority vote~~
30 ~~requirement shall cease to be effective two years after the filing~~
31 ~~of the most recent filing of the amendment or certificate of~~
32 ~~determination to adopt or readopt the supermajority vote~~
33 ~~requirement. At any time within one year before the applicable~~
34 ~~expiration date, a supermajority vote requirement may be~~
35 ~~renewed, and at any time after the expiration date, a~~
36 ~~supermajority vote requirement may again be made effective for~~
37 ~~another two-year period, by readopting the provision and filing a~~
38 ~~certificate of amendment pursuant to, and subject to the~~
39 ~~limitations of, this subdivision. If the provision is not readopted~~
40 ~~in this manner, then the particular corporate action or actions~~

1 ~~previously subject to the supermajority vote shall thereafter~~
2 ~~require a vote of only a majority of either the outstanding shares~~
3 ~~or the shares of the specified class or series which had previously~~
4 ~~been subject to the supermajority vote provision, whichever the~~
5 ~~ease may be.~~

6 (d) The amendments made to this section by the act amending
7 this section in the 2001–02 Regular Session shall not affect the
8 rights of minority shareholders existing under law.